

Tool for Supporting the Fair Use Reasoning Process

According to the Code of Best Practices in Fair Use for Media Literacy, teachers can:

1. make copies of newspaper articles, TV shows, and other copyrighted works and use them and keep them for educational use
2. create curriculum materials and scholarship with copyrighted materials embedded
3. share, sell and distribute curriculum materials with copyrighted materials embedded

Learners can:

4. use copyrighted works in creating new material
5. distribute their works digitally if they meet the transformativeness standard

Fair use requires reasoning and critical thinking. In determining whether a particular use of copyrighted material is a fair use, you must consider the rights of owners as well as your own needs and purposes as a user. Review the principles and limitations identified on pages 10 -14 of the Code. Depending on the particulars of the context and situation, it will be necessary to ask permission, pay a license fee, or claim fair use.

It takes practice to gain confidence in applying the fair use reasoning process. There is no one "right" answer in making a fair use determination, which is why the courts have established a "reasonableness standard" which limits the liability of librarians or teachers who make a good-faith judgment that might be judged to be a violation of copyright.

No one fair use checklist "fits" a particular case or situation. In some cases, a checklist can actually interfere with reasoning. A checklist can become a substitute or a short-cut for critical thinking. In thinking about fair use, each particular case must be critically examined through a reasoning process.

Use this worksheet to help guide your reasoning as to whether a use of copyrighted material could be considered a fair use. You can use this for evaluating projects or for planning your own. Keep in mind the nature of the use, the purpose of the use, the amount of the use, and the effect on potential market. Think about the context or situation in which the copyrighted material is being used in the new work. Be sure to think about whether or not your use of copyrighted materials is transformative in nature.

Name _____

Date _____

Project Title _____

RATIONALE: Why is this project being created? *

Describe the rationale of the project. Example Cold war trailer for HS AP Social Studies Class

PURPOSE OF ORIGINAL COPYRIGHTED MATERIAL *

Think about the purpose of the original work. Why was it created? What was its purpose?

YOUR PURPOSE *

Think about the purpose for your use. Are you using the work for teaching, scholarship, criticism, comment, parody, in good faith crediting the original author of the work?

☐ Yes

☐ No

PURPOSE: Justify *

How is your purpose for using the copyrighted work different from the author's original purpose?

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NATURE & AMOUNT *

Was the material taken appropriate in kind and amount, considering the nature of the copyrighted work and of the use?

☐ Yes

☐ No

NATURE: Explain *

Explain how you think the material taken was or was not appropriate in kind and amount considering the nature of the copyrighted work and of the use.

TRANSFORMATIVENESS *

Did the unlicensed use “transform” the material taken from the copyrighted work by adding value? Is the use of copyrighted material contributing to a unique new creative work or does your use of the copyrighted material mostly repeat the work for the same intent and value as the original?

EFFECT: What are my choices? *

Now that you have considered the rights of owners and you own needs and purposes as a user in determining whether to ask for permission, pay a license fee, or claim fair use what do you think you should do?

☐ Ask for permission

☐ Pay a license fee

☐ Claim fair use

☐ Choose another source (creative commons)